

Development of the human rights situation in Germany July 2016 - June 2017: report to the German Federal Parliament in accordance with sec. 2 para. 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights: executive summary

Veröffentlichungsversion / Published Version
Tätigkeitsbericht, Jahresbericht / annual report

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:
Deutsches Institut für Menschenrechte

Empfohlene Zitierung / Suggested Citation:

Deutsches Institut für Menschenrechte. (2017). *Development of the human rights situation in Germany July 2016 - June 2017: report to the German Federal Parliament in accordance with sec. 2 para. 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights: executive summary*. (Menschenrechtsbericht, 2016/2017). Berlin. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-55643-7>

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German Institute
for Human Rights

Executive Summary

Development of the human rights situation in Germany July 2016 – June 2017

Report to the German Federal Parliament in
accordance with sec. 2 para. 5 of the Act
regarding the Legal Status and Mandate of
the German Institute for Human Rights

About the report

The German Institute for Human Rights annually submits a report on the development of the human rights situation in Germany to the German Federal Parliament (in accordance with sec. 2 para. 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights of 16 July 2015; short: DIMRG). The report is presented on the occasion of the International Human Rights Day on 10 December. The DIMRG provides that the German Federal Parliament officially responds to the report. The second report 2016/2017 covers the period 1 July 2016 to 30 June 2017. Future reports will cover the period 1 July to 30 June of each subsequent year.

With regard to the requirement of an annual report on the human rights situation in Germany, the Federal Parliament and the Federal Council emphasised: It is a permanent and continuing task of public authorities to respect and realise human rights of all people in Germany. For that reason, the German Constitution demands a regular review of the effects laws can have on human rights and, if necessary, readjust by means of law making or by changing administrative measures. In addition, new challenges to human rights can emerge – including through political and societal change, international or domestic developments or scientific and technological progress. Such challenges need to be recognised, and solutions in accordance with human rights need to be developed. This report and its future editions intend to contribute to both, human rights impact assessments of laws as well as the identification of new human rights challenges.

All documents and further information about the report are available at:

www.institut-fuer-menschenrechte.de/en/human-rights-report/human-rights-report-2017/

The Institute

The German Institute for Human Rights is the independent National Human Rights Institution in Germany (§ 1 GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute was mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Introduction

This is the second Report on the Development of the Human Rights Situation in Germany presented to the German Federal Parliament by the German Institute for Human Rights. The report covers the period between 1 July 2016 and 30 June 2017.

Among the many human rights issues as evidenced, for example, in the recommendations to Germany issued by the human rights bodies of the United Nations and the Council of Europe, the report looks at a variety of topics affecting people experiencing situations of particular vulnerability.

In considering the situation of refugees living in communal accommodation facilities, the report examines a core prerequisite for the integration of refugees. Every person needs a space where their privacy is protected and where they can be completely with themselves. Meaningful protection also proves the credibility of Germany's commitment to the idea of the constitutional state and to human rights, which is taught in integration courses.

Up until now, refugees with disabilities have not been paid sufficient attention as a distinct group of people seeking protection. Physical or mental disabilities may warrant special accommodation or care. For that purpose, they need to be identified as people with disabilities and their needs have to be recognised. Failure to act at an early stage can lead to severe, even irreversible impairments or damage and, furthermore, prove an obstacle to integration.

Children of a parent held in prison belong to another vulnerable group largely invisible in public and political spheres. The imprisonment of a parent is very often a traumatic experience – affecting an estimated 100,000 children and young people in Germany. The report examines the feasibility of maintaining the primacy of the best interest of the child whilst weighing the child's right of access to the parent held in prison against the legitimate interests of enforcing the prison sentence.

Finally, new developments and insights are presented in selected areas of the topics addressed

in last year's report. The objective here is for the Institute's yearly reports, when considered together over the course of several years, to provide a good overview of the development of the human rights situation in Germany.

The report on the human rights situation is based on various sources of information and data. In part, the German Institute for Human Rights conducted its own qualitative studies in addition to the analysis of publicly available data, statistics, documents and studies, including printed records of the German Bundestag and the parliaments of Germany's federal states. Beyond this, the Institute collected data for individual sections of the report through expert interviews, a public consultation, and a questionnaire to ministries of justice in Germany's federal states. The German Institute for Human Rights would expressly like to thank the interview partners who provided information in the course of the research for this report, as well as the organisations that participated in the consultation. Our thanks are also due to the ministries in the federal states that responded to our questionnaire.

“Leaving no one behind” – this is the pledge which all the world's states adopted in the 2030 Agenda for Sustainable Development. This report is directed to helping ensure that those issues highlighted here as being of action are addressed – so that, in Germany too, the human rights of all are realised.

1 Germany within the System of Human Rights Protection

The Basic Law of the Federal Republic of Germany sets out inviolable and inalienable human rights (Art. 1 para. 2, Basic Law (GG)). Moreover, Germany is firmly integrated into the international and European systems of human rights protection. It has subscribed to international treaties of the United Nations and to European human rights agreements and their control mechanisms.

Germany as seen by Human Rights Bodies and Institutions

International monitoring procedures observe whether and to what extent progress has been made by States in implementing their human rights obligations. Committees of independent experts (Treaty Bodies, Commissions, and Working Groups) at the United Nations and the Council of Europe regularly evaluate Member States, assessing the state of implementation and respectively drafting recommendations. The basis for this is provided by the respective governmental reports as well as reports prepared in parallel by non-governmental organisations, national human rights institutions, and in part by information gained during fact-finding missions to the countries in question implemented by the Treaty Bodies.

In the reporting period 1 July 2016 to 30 June 2017, the following Treaty Bodies presented their assessment of the **state of implementation and their recommendations to Germany**:

- European Committee for the Prevention of Torture
- UN Committee on the Elimination of Discrimination against Women
- UN Working Group of Experts on People of African Descent
- European Commission against Racism and Intolerance

The Observations and Recommendations from these Treaty Bodies are summarised in the full report and are available in their original version on the website of the German Institute for Human Rights.

Germany in the United Nations and Intergovernmental Organisations

Germany is currently a member of the **UN Human Rights Council** for the period from 2013 until 2018. In the reporting period, Germany has advocated for the following issues: the right to water and sanitation, the right to privacy, and the right to adequate housing. In the UN Human Rights Council as well as in the **UN Security Council**, the Federal Government spoke out in support of the fight against trafficking in human beings. In addition, Germany has applied to be a non-permanent member of the UN Security Council (for 2019/2020), and has named justice as being one of four core aims, describing human rights as its necessary foundation.

In 2016, Germany assumed the **chairmanship of the Organisation for Security and Cooperation in Europe (OSCE)**. The main focus of Germany's chairmanship was on crisis and conflict management, strengthening the OSCE as a platform for dialogue, and promoting good governance and human rights within the OSCE area. Within this framework, Germany submitted to an independent evaluation which assessed the extent to which Germany has implemented OSCE commitments in the field of human rights and democracy. In taking this step, Germany contributed to establishing such voluntary reporting as good practice for countries assuming the chairmanship of the OSCE.

In 2016 and 2017, Germany was the second largest State donor to the **World Food Programme (WFP)**. The WFP provides humanitarian aid by delivering food assistance for victims of war, conflicts, and natural catastrophes, and is funded solely by voluntary contributions from governments, corporations, and private individuals. While the Federal Government has increased its contributions to the WFP over the last years, Germany only donated 0.07 per cent of its gross national income for humanitarian aid in 2016.

2 Topics of the previous report: Developments since July 2016

This Human Rights Report addresses topics from the previous reporting period to portray developments relevant to human rights in Germany over a longer period of time.

Refugees

In the last reporting period, the **quality of asylum procedures** had already been the subject of strong criticism from civil society. Studies are proving now that there are severe deficiencies in the hearings, assessment, and decision-making processes in asylum procedures. For comparable groups of asylum seekers in the federal states, the records show very diverse recognition rates – and hence very diverse chances of success in asylum procedures. The studies also show that these deficiencies were already evident before 2015, and thus cannot be justified solely by pointing to the more recent high number of asylum seekers.

In the last reporting period, under the Asylum Package II, **family reunification** for people granted subsidiary protection was suspended for a period of two years. The legislature has continued to adhere to this decision throughout the current reporting period. Consequently, people affected by this provision continue to lack a guarantee to the right to family reunification as a part of the right to family life (Art. 6 GG, Art. 8 ECHR, Art. 16 CRC, Art. 17 ICCPR). Furthermore, a new circular issued by the German Federal Foreign Office impedes family reunification for siblings of recognised unaccompanied minor refugees.

Since the end of the last reporting period (June 2016), the debate on refugee policy in Germany has been largely dominated by the question as to how to deport asylum seekers whose applications have been rejected and those suspected of terrorist activity or deemed a potential threat to national security (“Gefährder”). The proportions of those deported and those who have used the return programme has shifted slightly in favour of the former. New **subsidised repatriation programmes** were created, and committees were founded with

the aim of driving forward an increase in return rates for those under deportation orders. There has furthermore been a tightening of laws focusing first and foremost on the group of those suspected of terrorist activity or deemed a potential threat to national security (“Gefährder”). These laws, among other things, expanded the legal grounds for taking persons into custody pending deportation.

The **right of each child to education** (Art. 28 and 29 UN Convention on the Rights of the Child) is still not sufficiently guaranteed for many refugee children. Whether or not children living in initial reception centres have access to schools is largely determined by the federal state where the centre is located. In some federal states, school attendance is compulsory for refugee children immediately after registration (Berlin, Hamburg, Saarland and Schleswig-Holstein), while in others, school attendance is only compulsory after allocation to a municipality (Brandenburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Thuringia). The legal situation in Bavaria has deteriorated over the reporting period as children in initial reception centres are no longer subject to compulsory school education after the initial three months. Instead, compulsory schooling only applies in exceptional cases.

The findings from practical experience accounts reported in the last reporting period are now also reflected in many scientific studies – refugees suffer from the suspended family reunification, while restricted access to language courses and the labour market works to delay the process of building a life in Germany. In part, the **living conditions in refugee accommodation facilities** continue to be marked by a lack of privacy, poor hygienic conditions, and inadequate accommodation and provision for particularly vulnerable persons. As a result, essential human rights are still not sufficiently observed in the accommodation facilities for refugees, including for example, the right to adequate housing (Art. 11 para. 1 ICCPR) or the right to water and sanitation (Art. 11 para. 1, Art. 12 para. 1 ICCPR).

Persons with Disabilities Barred from Casting their Vote

There have been no changes in the factual and legal situation in Germany over the course of the reporting period. Several tens of thousands of persons with disabilities were – also in the 2017 election year – by law excluded from exercising their active and passive electoral rights. This affects persons with disabilities for whom a guardian for all matters has been appointed, as well as offenders not legally responsible for their actions guilt who have been committed to a psychiatric hospital for safety reasons (Sec. 13 Nos. 2 and 3, Federal Electoral Act (BGW)). An election examination complaint against this aforementioned exclusion from the right to vote is currently pending with the Federal Constitutional Court.

3 Organising Everyday Life in Communal Accommodation Facilities in conformity with Human Rights Principles

Many of those who fled to Germany in 2015 and 2016 are still living in communal accommodation facilities. At the end of 2016, 400,000 people lived in such accommodation which, often for many years, is the centre of their lives – the place where they eat and sleep, where children do their homework, and parents try to gain a foothold in the German labour market. It is from here that they start to **build their life in Germany**.

Studies from the last few years report on the extent of serious shortcomings in accommodation facilities, with poor sanitation, no private sphere or a lack of gender segregation in the sanitary facilities. As yet, relatively little attention has been paid to how communal living in accommodation facilities or the **relationship between the staff and occupants** can be organised to comply with human rights principles. Reports from practice make it clear that the staff in the accommodation facilities have considerable discretionary powers in some cases. Such leeway can be used to the

benefit of the occupants, but may also lead to **arbitrariness and a misuse of power**.

The analysis conducted by the German Institute for Human Rights therefore addresses the question of how the relationship between staff and occupants is legally arranged and how it is lived out in practice. What are restrictions and obstacles in guaranteeing fundamental and human rights for the occupants of communal accommodation facilities? To examine this issue, existing studies as well as sets of rules (32 **house rules** from communal accommodation facilities, the Reception Acts of the federal states, and the statutes of municipalities) were evaluated. In addition, 15 **interviews** were carried out with social workers in these forms of accommodation.

The rules applied in any specific communal accommodation are derived from, in particular, the house rules as well as the guidelines and instructions provided by the authorities responsible for that accommodation. However, these rules differ from one facility to another. In some accommodation facilities, the relationship between occupants and staff (social workers, security personnel, house services and management) is not regulated in writing – including, for example, the question as to when the staff are allowed to **enter private rooms**. In some cases, existing rules and regulations do not comply with the standards of fundamental and human rights – for example, where the house rules stipulate a **blanket ban on any visitor staying overnight**. The analysis also shows that the existing rules and regulations, in certain instances, grant the staff very wide-ranging powers of action – for example, in **banning individuals from the premises**. As a result, the staff sometimes interpret rights in a very individual fashion. This leads to treatment and the reasoning for such treatment – e.g. banning a person from the premises, the regulation of overnight visitors, or the personnel's access rights to private rooms – being completely different from one accommodation to another. These are practices which, in a number of facets, do not conform to human rights standards.

These findings stand in stark contrast to the fact that guidelines for organising the legal framework can be derived from fundamental and human

rights. Existing standards, in particular the minimum requirements in federal state laws, as well as in the statutes of the municipalities and the house rules of the accommodation facilities therefore ought to be monitored for their compatibility with the right to the **inviolability of the home** (Art. 13 GG), the right to the protection of **private and family life** (Art. 17 ICCPR, Art. 8 ECHR), and the **protection from discrimination** (Art. 2 para. 1 ICCPR, Art. 2 para. 2 ICCPR, Art. 14 ECHR). The authorities responsible for the accommodation ought to substantiate this legal framework in accordance with human rights.

The analysis also shows that occupants of such accommodation facilities are not systematically informed of their rights. Where **complaints bodies** do exist, interview partners describe them as either inadequate or not accessible for the occupants. It is reported that complaints have little chance of success or are not even presented as the person concerned is afraid of sanctioning from other occupants or the staff.

It is also the task of the authorities responsible for the accommodation to ensure that the occupants can exercise their **right to an effective remedy** (Art. 2 para. 3 ICCPR and Art. 13 ECHR). The occupants of such accommodations must be informed of their rights and empowered to claim those rights. To support this, low-threshold and effective complaints bodies and mechanisms ought to be swiftly established.

4 Refugees with Disabilities: Identification, Accommodation and Care

In Germany, refugees with disabilities face a series of problems which have a dramatic impact on their situation in some cases.

The exact number of refugees with disabilities amongst asylum seekers is unknown. No concrete figures have been collected neither on a federal nor on a regional level and the existing relevant estimates vary in terms of the terminology and reference groups.

The UN Convention on the Rights of Persons with Disabilities recognises traumatised persons as falling under the definition of persons with disabilities. Several studies show that between 16–55 per cent of refugees in Germany suffer from trauma.

The National Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities of the German Institute for Human Rights has examined to which extent the identification, accommodation, and care of refugees with disabilities meet human rights standards. For this research, legal sources and studies were evaluated together with printed records of the German Bundestag and parliaments of Germany's federal states. In addition, a public consultation was held with 13 civil society organisations that advise and assist asylum seekers with disabilities. The experience of these organisations is based on **advising around 2,000 refugees with disabilities** in 2016.

To date, there is still no unified procedure to **identify** vulnerable persons in need of special protection in Germany. For people with disabilities, this results in a lack of any systematic approach to establishing whether a person has a disability, or to identifying the exact kind of disability. Since disabilities are not identified for months or even years (and therefore remain untreated), this results in the **exacerbation of existing impairments**. Where a disability is identified, this occurs by chance, often at the initiation of the few non-governmental advisory services. This is the case in spite of the fact that identifying a disability is a necessary prerequisite so that the special needs of refugees with disabilities are taken into account during the reception process.

Similarly, the special needs of refugees with disabilities are hardly considered in the provision of **accommodation**. According to the United Nations Convention on the Rights of Persons with Disabilities, asylum seekers have a right to needs-oriented and barrier-free accommodation that meets the needs related to impairment (Art. 28 in conjunction with Art. 9 CRPD). As a rule, allocation to accommodation does not take into account whether a person has special needs due to a disability. Available spaces are far from sufficient to meet the demand, leading to **long waiting times for the few places in accessible accom-**

modation. In practice, this means, for example, that a single mother has to carry her severely disabled 13-year-old son up and down stairs in the accommodation facilities several times a day since the family's room and the bathroom and kitchen are not located on the same floor.

Refugee accommodations are often in an isolated location and hence not adequately integrated into the local support system. In many cases, there are no support facilities for people with disabilities in the vicinity of the accommodation, nor schools, nursery schools, and day care centres. As a result, for example, refugees with a hearing impairment are **isolated to a large extent**, with neither contact to hearing-impaired persons nor to people able to use sign language, nor to sign language interpreters (who accompany them to their appointments). Refugees with disabilities ought to be moved into apartments as quickly as possible. Above and beyond their recognition as being entitled to asylum, they in part still have no access to the housing market due to **the lack of sufficient affordable accessible housing**.

The **health care provision** for refugees with disabilities is regulated via the Asylum Seeker Benefits Act (AsylbLG). As it is for all asylum seekers in Germany, during the first 15 months of residence their right to treatment is restricted to cases of acute illness and chronic pain (Sec. 4 AsylbLG). Remedies or therapies going beyond this can be authorised in individual cases by the social and welfare services (Sec. 6 AsylbLG). All medical needs related to a disability, such as therapies, hearing and seeing aids, orthopaedic therapeutic aids, home care etc. have to be applied for under the exception provision in Section 6 of the Asylum Seeker Benefits Act (AsylbLG). However, for refugees with disabilities, these needs are not an exception, but the rule.

In practice it has been reported that authorisation is not normally granted for these needs. As a result, **impairments are exacerbated** and produce irreversible complications in some instances. Such a situation, for example, results in an orthopaedic walking aid for a two-year-old child with limited mobility only being approved after a two-year delay, producing deformities in hips and

joints which may well prevent the child from ever learning to walk properly.

Nonetheless, the Federal Government assumes that the existing regulations secure an adequate level of health care. It points to the latitude given to the municipal authorities in interpreting Section 6 of the Asylum Seeker Benefits Act (AsylbLG), claiming that all the needs of people with disabilities can be provided for in this manner. The analysis shows, however, that there are deficits in care to the point where refugees with disabilities in Germany are not guaranteed the right to the highest attainable standard of health (Art. 25 CRPD in conjunction with Art. 12 ICCPR). Persons who cannot be provided with adequate care under the present regulations ought to have **access to the regular health care system**. For all other refugees, **a right to the provision of the necessary services** ought to be laid down in Section 6 of the Asylum Seeker Benefits Act (AsylbLG).

5 The Right of Children to Contact with a Parent Held in Prison

A parent held in custody and the related loss of direct contact has a **serious impact on a child's well-being**. In comparison to other children in their age group, the children of parents held in prison have a higher risk of mental illness, and suffer severely from the social consequences of their situation. According to estimates, every day 100,000 children are affected by one of their parents being held in custody. Official figures do not exist.

The right of the child to direct contact with their parents is anchored in the UN Convention on the Rights of the Child (Art. 9 CRC) and recognised by the Federal Constitutional Court. The UN Convention on the Rights of the Child also calls for ensuring the **primacy of the child's best interests** if the State intervenes – for example, through arrest – in the relationship between children and parents (Art. 3 CRC). This principle is not only binding for the Federal Government, but also for the federal states.

Research shows that **regular contact** between children and their parent kept in prison is very important for the child's well-being. Taking this into account, the National Monitoring Mechanism for the UN Convention on the Rights of the Child of the German Institute for Human Rights has investigated the existing regulations on children visiting a parent taken into custody, and analysed the law governing the enforcement of sentences and penal law in the federal states. Additionally, the ministries of justice in the 16 federal states provided information through a questionnaire on the relevant regulations and practices on a regional level.

The analysis shows: The possibilities for children to visit their parents kept in prison vary considerably across Germany. The duration of the visiting time is defined as the right of the parent held in custody, but is not aligned with the needs or even the rights of the visiting child. The **minimum visiting time** prescribed by law varies widely between federal states, from **one hour a month** (among others, Hesse and Saarland), to over two hours (among others, Berlin and Mecklenburg-Western Pomerania) **to up to four hours** (among others, Brandenburg and Lower Saxony). In some federal states, this minimum visiting time can – according to the law – be increased, e.g. in Mecklenburg-Western Pomerania by a further two hours for children under 14. Nearly all federal states make provisions for long-term visits by family members which apply to selected circumstances. Yet, granting the permission for such visits falls within the discretion of the relevant authority. Beyond this, penal institutions can also implement their own rules on visiting times. There is no information on the duration of visiting time actually granted.

A disparity also applies to **visiting rooms** or, respectively, the conditions under which children's visits can be held. Here too it largely depends on the particular penal institution to which extent the child's well-being is taken as a point of reference. In some cases, the ministries of justice in the federal states report of family-friendly rooms where those imprisoned can meet their children or their families – for example, in **family visiting rooms equipped with children's toys** (Berlin, Mecklenburg-Western Pomerania, Saarland). In the reporting period, the federal state law in

Schleswig-Holstein governing the enforcement of sentences was amended so that penal institutions are now obliged to provide suitable rooms for minors visiting a parent held in prison. Moreover, it is reported that there are family-friendly formats for visits, such as 'parent days' (Bavaria).

State authorities are obliged to inform children of what is involved in the imprisonment of a parent in a way appropriate to their age and state of development (Art. 9 para. 4 CRC, Art. 13 and 17 CRC). In Germany, it largely depends on the commitment of the federal state, the particular penal institution and, in part, civil society organisations whether this rule is implemented. Through their involvement and support, the latter have helped to ensure a "family-sensitive enforcement of the sentence" and that the children affected are increasingly taken into account. They offer **films, children's books, or posters** which explain the conditions of imprisonment. Only a select number of federal states report that they provide **information material especially for the children** of prisoners. The professionals dealing with the children (child and youth welfare services, prison officers, teachers, educators) are also not made sufficiently aware of the issues surrounding this topic.

Imprint

PUBLISHER

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HUMAN RIGHTS REPORT TO THE GERMAN
FEDERAL PARLIAMENT | December 2017

TRANSLATION

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LAYOUT

FGS Kommunikation, Berlin

Printed on 100 percent recycled paper



The long version of this report (German) is available at: <http://www.institut-fuer-menschenrechte.de/publikationen/show/entwicklung-der-menschenrechtssituation-in-deutschland-juli-2016-juni-2017/>

An executive summary of the report is also available in English, German and Plain German language: <http://www.institut-fuer-menschenrechte.de/en/human-rights-report/human-rights-report-2017/>

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